

## **MINORITY/WOMEN BUSINESS ENTERPRISE (M/WBE) SPECIAL CONTRACT PROVISIONS**

**Notification is hereby given that an M/WBE Contract Specific Goal has been established for this Contract. The Contractor/vendor has committed to            percent (        %) M/WBE participation of the total dollar value of this Contract including any change orders and/or modifications throughout the term of this Contract/agreement. The commitment is a contractual commitment upon execution of the Contract.**

### **A. GENERAL REQUIREMENTS**

1. It is the policy of the Dallas/Fort Worth International Airport Board of Directors ("Airport Board") to support the growth and development of Minority/Women Business Enterprises ("M/WBE") that can successfully compete for Airport prime contracting and subcontracting opportunities.
2. A "Contractor" is defined as one who participates, through a Contract or any other contractual agreement. For purposes of these Provisions, a Contractor is one who seeks to do business with the Airport Board by submission of a bid or proposal on any such contract or subcontract. A Contractor includes but is not limited to a Contractor, consultant, developer or vendors.
3. It is the policy of the Airport Board to ensure non-discrimination in the award and administration of Airport Board Contracts. Consequently, the Contractor must fully comply with the requirements of the Airport Board's Minority/Women Business Enterprise Program Policy and Administrative Procedures in proposing and performing hereunder.
4. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of the Airport Board's M/WBE Program Policy and Administrative Procedures. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy, as the Airport Board deems appropriate. The Contractor shall insert an Article containing all of the provisions of this Section, including this paragraph, in all subcontracts hereunder, except altered as necessary for the proper identification of the contracting parties and the Airport Board under this Contract.
5. The Business Diversity & Development Department ("BDDD") is responsible to ensure compliance with the Airport Board's M/WBE Program Policy and Administrative Procedures. BDDD has the mission to proactively facilitate and maximize business and capacity building opportunities for M/WBEs by collaborating with internal customers and implementing effective innovative programs and approaches for prime and subcontracting opportunities.
6. The Contractor specifically agrees to comply with all applicable provisions of the Airport Board's M/WBE Program Policy and Administrative Procedures and any amendments thereto. M/WBE and Non-M/WBE subcontractors also agree to comply with all applicable provisions of the Airport Board's M/WBE Program Policy and Administrative Procedures ("Policies"). BDDD and or the Airport Board may make changes to the existing policy, procedures and contract provisions. Any

future changes supersede past policies, procedures, contract provisions. The Contractor and subcontractors are responsible to be aware of future changes.

7. The Contractor shall maintain records, as specified in the Audit and Records Section of the Special Provisions in the Contract, showing:
  - a. Subcontract/supplier awards, including awards to M/WBEs;
  - b. Specific efforts to identify and award such Contracts to M/WBEs, such as when requested copies of executed Contracts with M/WBEs to establish actual M/WBE project participation.

#### B. ADMINISTRATIVE REQUIREMENTS

1. All Contractors are charged with knowledge of and are solely responsible for complying with each requirement of the Policies in submitting a bid/proposal and, if awarded a Contract, in performing the work described in the Contract documents. These instructions are intended only to generally assist the Contractor in preparing and submitting a compliant bid/proposal. Should any questions arise regarding specific circumstances, Contractors must consult with the BDDD office at 972-973-5500.
2. The Contractor shall appoint a high-level official to administer and coordinate the Contractor's efforts to carry out its M/WBE contractual commitments.
3. The Contractor agrees to submit monthly reports of payments and subcontract and/or supplier awards to M/WBEs and Non-M/WBEs in such form and manner and at such times as the Airport Board shall prescribe.
4. The Contractor shall provide BDDD access to all books, records, accounts and personnel in accordance with the Audit and Records section of these Special Provisions. Such access will be used for, among other purposes, determining M/WBE participation and compliance with the Policies. All Contractors may be subject to interim and post-contract M/WBE audits. Audit determination(s) regarding Contractor's compliance with the Policies may be considered and have a bearing on consideration of the Contractor for award of future Contracts.

#### C. GOALS AND GOOD FAITH EFFORTS

1. Determining Responsive, Non-Responsive and Good Faith Efforts (Pre-Award)
  - a. Each Contractor must comply with the terms and conditions of the M/WBE Program Policy and Administrative Procedures in making its bid or proposal and, if awarded the Contract, in performing all work thereunder. A Contractor's failure to comply with any Rules or Regulations promulgated pursuant thereto, or any additional requirements contained herein may render a bid or proposal non-responsive and may constitute cause for rejection.
    - i. Responsive; compliance with requirements. If a bid/proposal meets the Contract Specific Goal or shows an adequate good faith effort in accordance with the M/WBE Program Policy and

Administrative Procedures, then BDDD shall notify the procuring department to regard the bid/proposal as responsive.

- ii. Non-Responsive; failure to meet requirements. If a bid/proposal subject to a Contract Specific Goal does not provide the necessary information, documentation or forms outlined in the M/WBE Program Policy and Administrative Procedures, then BDDD shall notify the procuring department to regard the bid/proposal as non-responsive. Such determination shall result in no further consideration of the bid/proposal by the Airport Board and is not appealable.
- b. If BDDD establishes a Contract Specific Goal, the goal will be stated in the Advertisement and Invitation to Bid. In order to comply with the bid/proposal requirements of the solicitation and the M/WBE Program Policy and Administrative Procedures, a Contractor must either meet the Contract Specific Goal or demonstrate that the Contractor has made sufficient good faith efforts to meet the Contract Specific Goal. If the Contractor will not meet the M/WBE goal, it shall nevertheless be eligible for award of the Contract if it can demonstrate to BDDD that it has made good faith efforts to meet the goal. This good faith effort documentation must be submitted with the Contractor's bid or proposal.
- c. For construction Contracts awarded using the procurement methods of Indefinite Delivery, Job Order Contract, Construction Management-at-Risk or Design Build, a Compliance Plan is required to address the Contract Specific Goal and the utilization of M/WBEs on such Contract, or for alternative demonstration of good faith efforts by the Proposer. The development, scope and utilization of such compliance plans shall be addressed in a separate document.
- d. In evaluating a Contractor's good faith efforts submission, BDDD will only consider those documented efforts that occurred prior to the good faith effort submission.
- e. The submission of good faith efforts documentation is a matter of responsiveness and shall include a specific response to each of the following criteria with the bid or proposal. The following factors are taken into account when assessing whether a Contractor made good faith efforts to meet the Contract Specific Goal. These factors are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the Contract Specific Goal. These factors should not be considered as a template, checklist or some quantitative formula. A Contractor is required to meet all factors outlined below and provide support documentation in order for good faith efforts to be assessed. Mere pro forma efforts are not good faith efforts to meet the Contract Specific Goal. This means that a Contractor must show that it took all necessary and reasonable steps to achieve a Contract Specific Goal, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to meet the Contract Specific Goal, even if they were not fully successful. Failure of the Contractor to demonstrate adequate good faith efforts as to any one of the following categories shall render the overall good faith showing insufficient and the bid/proposal non-responsive. BDDD will evaluate the good faith efforts on quality, quantity, and intensity of the different kinds of efforts that the Contractor has made based on the regulations and the guidance in 49 C.F.R. part 26. **NOT SUBMITTING**

**PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADEQUATE DEMONSTRATION OF GOOD FAITH EFFORT.** Contractors are not limited to these particular areas and may include other efforts deemed appropriate. Complete the **Commitment to M/WBE Participation** form and attach support documentation only if the Contract Specific Goal is not achieved. For additional guidance concerning good faith efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 Part 26, Appendix A).

- i. Conducting market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all M/WBEs listed in the State and/or Local respective directories of firms that specialize in the areas of work desired (as noted in the M/WBE directory) and which are located in the area or surrounding areas of the project. *The Contractor should solicit this interest as early in the acquisition process as practicable to allow the M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the M/WBEs are interested in taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening.*
- ii. Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates M/WBE participation.
- iii. Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.
- iv. Negotiating in good faith with interested M/WBEs. It is the bidder's responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the

names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for M/WBEs to perform the work. A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.

- v. Not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. *A prime contractor's inability to find a replacement M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement M/WBE, and it is not a sound basis for rejecting a prospective replacement M/WBE's reasonable quote.*
- vi. Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- vii. Making efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- viii. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of M/WBEs.

- ix. At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)(vi), the bidder must submit copies of each M/WBE and non-M/WBE subcontractor quote submitted to the bidder when a non-M/WBE subcontractor was selected over an M/WBE for work on the contract to review whether M/WBE prices were substantially higher; and contact the M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- f. BDDD will review not only at the different kinds of efforts that the Contractor has made but also the quantity and quality of those efforts. Efforts that are merely pro-forma are not good faith efforts to meet the goal, even if they are sincerely motivated. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort. Whether other Contractors attained a sufficient level of M/WBE participation to meet the Contract Specific Goal will also be taken into consideration when determining whether the Contractor in question has made a good faith effort. A promise to use M/WBEs after Contract award is not considered to be responsive to the Contract solicitation or to constitute good faith efforts. BDDD will also consider if, given all relevant circumstances, the Contractor's efforts could reasonably be expected to produce a level of M/WBE participation sufficient to meet the goal.
- g. Whether or not the Contract Specific Goal has been met and/or whether there were sufficient good faith efforts is considered a matter of the Contractor's responsiveness. The requirement to submit documentation that the Contract Specific Goal has been met or good faith efforts documentation has been submitted in the manner prescribed by BDDD is considered a matter of the Contractor's responsiveness. The Airport Board will only award Contracts to Contractors determined to be responsive. If a Contractor fails to submit good faith efforts documentation with the bid or proposal, it waives the right to appeal the the BDDD's decision that sufficient good faith efforts were not made. The Vice President of BDDD or designee shall determine whether the Contractor made the required good faith efforts and, if not, shall recommend that the Contractor be deemed non-responsive.
- h. If a Contractor, that has submitted good faith efforts documentation, desires a review of BDDD's decision, it must file a written request for an appeal within two (2) business days after receipt of the written decision to the following Reconsideration Official:

Executive Vice President  
Administration & Diversity  
DFW Airport, 2400 Aviation Drive  
P.O. Box 619428  
DFW Airport, TX 75261-9428

- i. As part of the reconsideration, the Contractor will have the opportunity to meet in person with the Reconsideration Official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Contractor will also have the opportunity to provide written documentation or argument concerning the issue of good faith. Arguments, evidence, and documents supporting the basis for the appeal must be received no later than five (5) business days after the notice of appeal is filed. The Reconsideration Official's decision shall be made based solely on the entire administrative record presented with the original good faith efforts documentation. No new additional information or documentation can be provided or allowed for review. The Reconsideration Official will issue a final written decision in response to the appeal.
  - j. Failure of the bidder or proposer to show good faith efforts as to any one (1) of the criteria listed above shall render its overall good faith effort insufficient and its bid or proposal deemed non-responsive.
2. M/WBE Commitment Modification Due to Change in Scope of Work (Post Award)
- a. The Contractor has a continuing obligation as a covenant of performance to meet the M/WBE utilization to which it committed at Contract award, inclusive of change orders, amendments, and modifications. If the Contractor during Contract performance is not able to meet its original M/WBE commitment, due to changes to the scope of work made by the Airport Board, the Contractor and User Department must immediately notify BDDD of the scope of work changes that impact M/WBEs for approval. The Contractor has a continuing obligation to meet its original M/WBE commitment.
  - b. Such good faith efforts during Contract performance must include, but are not limited to:
    - i. Solicitation of M/WBEs that are certified in the applicable area of work or specialty;
    - ii. Providing interested M/WBEs with adequate information about the plans, specifications, scope of work and requirements of the Contract;
    - iii. Fairly investigating and evaluating the interested M/WBEs' regarding their capabilities, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized M/WBE because the M/WBE was not qualified;
    - iv. Negotiating in good faith with interested M/WBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested M/WBEs and providing written documentation why the Contractor and any of the M/WBEs contacted did not succeed in negotiating an agreement; and
    - v. Effectively using the services of available minority and women community organizations; chambers and Contractor groups; local, State, and Federal business assistance offices, and other

organizations that provide assistance in the identification of M/WBEs

- c. Modified good faith efforts must be demonstrated to be meaningful and not merely for formalistic compliance with this requirement. The scope and intensity of the efforts will be considered in determining whether the bidder or proposer has achieved a good faith effort.
- d. A Contractor determined not to have made good faith efforts to meet its M/WBE contractual commitments may request administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made good faith efforts in accordance with the M/WBE Program Policy and Administrative Procedures. BDDD's determination shall be final.

#### D. COUNTING M/WBE PARTICIPATION

- 1. BDDD will evaluate each bid or proposal to determine the responsiveness of the bid or proposal to the M/WBE Program Policy and Administrative Procedures and contractual requirements. In determining if a Contractor's committed levels of participation meet or exceed the solicitation's or the development agreement's Contract Specific Goal, BDDD may base its determination solely on the information provided in the bid or proposal document.
- 2. If a joint venture is proposed to meet the Contract Specific Goal or any portion thereof, the total value of the distinct and clearly defined portions of the work of the Contract that the M/WBE will perform with its own workforce will be counted towards the Contract Specific Goal. In addition, the M/WBEs ownership interest percentage must be commensurate with its capital contribution, control, management, profits and risks.
- 3. When counting the M/WBE participation on bids with charged reimbursable expenses, deductive or add alternatives, the responsiveness determination shall be based on the base bid. Contractors, however, are strongly encouraged to include M/WBE participation on add alternates and charged reimbursable expenses when feasibly possible. Any participation achieved on add alternates and charged reimbursable expenses will be credited towards the M/WBE goal.
- 4. When calculating participation levels, percentages and dollar amounts for each M/WBE, the Contractor cannot round up in determining whether or not the total of these amounts meets or exceeds the Contract Specific Goal.
- 5. A Contractor cannot require an M/WBE subcontractor to enter into an exclusive arrangement for purposes of submitting its bid or proposal or require the M/WBE subcontractor to enter into a non-compete arrangement post award
- 6. Post award, the Contractor may count towards its M/WBE contractual commitment an M/WBE in the relevant market area that is certified by an approved entity during the performance of the Contract, if the M/WBE is added to the Contract or substituted for an M/WBE pursuant to M/WBE SUBSTITUTIONS OR TERMINATIONS section herein.
- 7. The Contractor may not count toward its M/WBE contractual commitment the dollar value of work performed by an M/WBE after it has ceased to be certified as an



M/WBE or ceased to satisfy the requirement that the M/WBE have a physical place of business in the relevant market area.

8. M/WBE prime Contractors can count their self-performance toward meeting the Contract Specific Goal, but only for the scope of work and at the percentage level they will self- perform.
9. M/WBE prime Contractors cannot count their self-performance in lieu of meeting an M/WBE subcontracting commitment made at the time of contract award.
10. When an M/WBE participates in a Contract, the Contractor shall count only the value of the work actually performed by the M/WBE toward the Contract Specific Goal.
11. All M/WBE contractors, subcontractors, joint ventures, suppliers, manufacturers, manufacturer's representatives, or brokers listed in the bid or proposal must actually perform a commercially useful function in the work of a contract within the area(s) for which they are certified, and must not act as a conduit. In no case, however, shall an M/WBE act as a conduit, nor shall the participation of an M/WBE count toward the goal to the extent it fails to perform a commercially useful function.
12. When a Contractor utilizes an M/WBE staffing service to perform work and the workers are independent contractors, subcontractors, or employees of the staffing firm who do not receive paid benefits (including, at a minimum, healthcare coverage and paid time off), the Contractor shall count only the amount of fees or commissions charged by the staffing service for providing labor force, consistent with normal industry practices.
13. A Contractor cannot count toward the Contract Specific Goal amounts paid to an affiliate, as defined in the M/WBE Program Policy and Administrative Procedures.
14. The Contractor shall count the entire amount of that portion of a Contract (or other Contract not covered by this section) that is performed by the M/WBEs own work forces. The Contractor may count the cost of supplies and materials obtained by the M/WBE for the work of the Contract, including supplies purchased or equipment leased by the M/WBE (except supplies and equipment the M/WBE subcontractor purchases or leases from the prime Contractor or its affiliate).
15. When an M/WBE subcontracts part of the work of its Contract to another firm at any tier, the value of the subcontracted work may be counted towards the M/WBE goal only if the M/WBE's subcontractor is itself an M/WBE. Work that an M/WBE subcontracts to a non-M/WBE does not count toward M/WBE goal.
16. The Contractor will count towards the M/WBE goal expenditures to an M/WBE subcontractor, only if the M/WBE subcontractor is performing a commercially useful function on the Contract.
  - a. AN M/WBE performs a commercially useful function when it is responsible for execution of the work of the Contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the M/WBE must also be responsible, with respect to materials and supplies used on the Contract, for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. To determine whether an M/WBE is performing a commercially useful function, the Contractor must evaluate the amount of the work subcontracted, industry practices, whether the amount the firm is

to be paid under the Contract is commensurate with the work it is actually performing, the M/WBE credit claimed for its performance of the work, and other relevant factors.

- b. An M/WBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed in order to obtain the appearance of M/WBE participation. In determining whether an M/WBE is such an extra participant, the Contractor must examine, among other relevant factors, similar transaction, particularly those in which M/WBEs do not participate.
  - c. If an M/WBE does not perform or exercise responsibility for at least 30 percent of the total cost of its Contract with its own work forces, or the M/WBE subcontracts a greater portion of the work of a Contract than would be expected on the basis of normal industry practice for the type of work involved, the Contractor must presume that it is not performing a commercially useful function.
  - d. When an M/WBE is presumed not to be performing a commercially useful function as provided in this section, the M/WBE may present evidence to rebut this presumption. BDDD may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. BDDD in its sole discretion shall determine whether an M/WBE is performing a commercially useful function.
17. BDDD shall use the following factors in determining whether an M/WBE trucking company is performing a commercially useful function:
- a. The M/WBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular Contract, and there cannot be a contrived arrangement for the purpose of appearing to meet the M/WBE goal.
  - b. The M/WBE must itself own and operate at least one fully licensed, insured and operational truck used on the Contract.
  - c. The M/WBE shall receive credit for the total value of the transportation services it provides on the Contract using trucks it owns, insures, and operates using drivers it employs.
  - d. The M/WBE may lease trucks from another M/WBE, including a owner-operator who is certified as an M/WBE. The M/WBE who leases trucks from another M/WBE shall receive credit for the total value of the transportation services the lessee M/WBE provides on the Contract.
  - e. The M/WBE may lease trucks from a non-M/WBE firm, including from an owner-operator. The M/WBE that leases trucks equipped with drivers from a non-M/WBE is entitled to credit for the total value of transportation services provided by non-M/WBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by M/WBE-owned trucks or leased trucks with M/WBE employee drivers. Additional participation by non-M/WBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from BDDD.



- iii. If the materials or supplies are purchased from an M/WBE regular dealer, BDDD will count 60% of the cost of the materials or supplies toward M/WBE goals.
  - iv. For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought and kept in stock in the usual course of business.
    - A. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
    - B. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
  - v. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expenditure transactions are not regular dealers.
  - vi. With respect to materials or supplies purchased from an M/WBE which is neither a manufacturer nor a regular dealer, BDDD will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward M/WBE goals, provided it has been determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. BDDD will not count any portion of the cost of the materials and supplies themselves toward M/WBE goals, however.
  - vii. BDDD will determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.
19. If an M/WBE subcontractor is not certified at the time of the execution of the Contract, supplemental agreement or subcontract, the Contractor may not count the firm's participation toward the M/WBE goal until the firm is certified. Counting of participation is not retroactive; only dollars paid to the M/WBE after certification count toward the M/WBE goal. Additionally, the Contractor shall not count the dollar value of work performed under a Contract with a firm after it has ceased to be M/WBE certified.

20. BDDD reserves the right to reject the participation of a certified firm for credit towards meeting the Contract Specific Goal, in its sole discretion.
21. The Contractor shall not count the participation of an M/WBE subcontractor toward the goal until the amount has been actually paid to the M/WBE.
22. The following expenditures to M/WBEs may also count toward the M/WBE goal:
  - a. The fees or commissions charged for providing a bona fide service, such as professional, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - b. The fees charged for delivery of material and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - c. The fees of commission charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by BDDD to be reasonable and not excessive as compared with fees customarily allowed for similar services.
23. Joint Ventures: The Airport Board shall encourage where economically feasible joint ventures to maximize prime contracting opportunities for M/WBEs on all eligible Contracts, including commercial development agreements.
  - a. If a Contractor engages in a joint venture to satisfy its M/WBE commitment, BDDD shall review all contractual agreements or other pertinent documents regarding:
    - i. The initial capital investment of each venture partner;
    - ii. The proportional allocation of profits, losses and risks to each venture partner;
    - iii. The sharing of the right to control the ownership and management of the joint venture;
    - iv. Actual participation of the venture partners in the performance of the Contract;
    - v. The method of and responsibility for accounting;
    - vi. The methods by which disputes are resolved; and
    - vii. Other pertinent joint venture factors.
  - b. A draft of the proposed joint venture agreement must be submitted with the bid or proposal to BDDD for its approval in writing. BDDD shall

determine the degree of M/WBE participation resulting from the joint venture that may be credited towards the Contract Specific Goal.

- c. BDDD will count M/WBE participation where the M/WBE or joint venture partner performs a portion of work on the Contract and the percentage of ownership or equity of the M/WBE in a joint venture. BDDD will allow the joint venture to count the portion of the total dollar value of the Contract equal to the distinct, clearly defined portion of the work of the Contract that the M/WBE joint venture partner performs with its own forces toward the M/WBE commitment and for which it is at risk.
- d. If, after the award of a contract to a team, any member of the team believes that the terms and conditions of the agreement as approved by BDDD have not been complied with, then such member may seek review and mediation of such agreement before the Vice President of BDDD. The request for review must be made in writing.
- e. In the event that the mediation with the Vice President, does not resolve all disputes, the Vice President of BDDD shall have the option of referring mediation proceedings to a qualified outside mediator, the costs to be borne by the interested parties.

#### E. CERTIFICATION

- 1. In order to count the participation of M/WBEs towards the Contract Specific Goal or Annual Goal, the M/WBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable. In addition to having a valid certification from one of the entities listed above, the M/WBE must have a place of business in the Airport Board's relevant market area at the time the bid or proposal is submitted for credit towards meeting the M/WBE goal. The Airport Board's relevant market area is Dallas, Tarrant, Collin and Denton counties.
- 2. The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD. Using a post office box, private mailbox services, another person's or firm's office space (including Airport Board office space), virtual offices, shared or coworking office spaces, executive suites or staffing services does not satisfy the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the Appendix of the M/WBE Program Policy and Administrative Procedures.
- 3. An M/WBE owner or employee living in the relevant market area does not satisfy the requirement that the M/WBE having a place of business in the relevant market area. However, an M/WBE majority owner who operates his/her own business solely from his/her own residence in the four-county relevant market area satisfies the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the Appendix of the M/WBE Program Policy and Administrative Procedures.
- 4. Affiliate/Affiliation: Regardless of certification by a recognized agency, the M/WBE must be an independent business and not an affiliate of any other business including non-M/WBEs. Affiliate means any business entity that is affiliated with an

M/WBE or with owners of such M/WBE or any other business enterprise. Business enterprises are affiliates of each other when:

- a. Affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Control may be affirmative or negative. Negative control includes instances where a minority shareholder has the ability, under the concern's charter, by-laws, or shareholder's agreement, to prevent a quorum or otherwise block action by the board of directors or shareholders.
  - b. Other relationships or identity of interests between or among parties exist such that affiliation may be found.
  - c. *Affiliation based on identity of interest.* Affiliation may arise among two or more persons with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as family members, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated.
  - d. Firms owned or controlled by married couples, parties to a civil union, parents, children, and siblings are presumed to be affiliated with each other if they conduct business with each other, such as subcontracts or joint ventures or share or provide loans, resources, equipment, locations or employees with one another.
5. BDDD in its sole discretion shall determine whether an applicant is an independent business.
  6. The Contractor must submit to BDDD a properly completed M/WBE Certification Certificate or letter, with all required attachments, for all M/WBEs proposed to be utilized as subcontractors or suppliers to meet the Contract Specific Goal at the time of bid/proposal submission. The Airport Board reserves the right to reject the participation of a certified firm for credit towards meeting the Contract goal, in its sole discretion. Such rejection shall be in writing and state the reason(s) for the rejection. BDDD's decision on the request shall be final.
  7. A firm must be certified as an M/WBE at the time of bid or proposal submission to be counted towards meeting the Contract Specific Goal for purposes of determining Contract award.
  8. Dollars paid to a firm prior to it obtaining an approved certification do not retroactively apply toward meeting the Contract Specific Goal or Annual Goal.
  9. M/WBE certification does not constitute a representation or warranty as to the qualifications or capabilities of any certified firm.
  10. BDDD maintains a directory of certified firms that have expressed an interest in doing business with the Airport Board or are currently doing business with the Airport Board. The directory is not a certification database. Certifications listed are provided by third-party service providers. Bidders and proposers may use the

directory to assist them in locating M/WBE firms for the work required on the Contract; however, the certifications should be verified through the approved certification agency. The directory is located at:

- <https://dfw.diversitysoftware.com>

## F. PRE-AWARD COMPLIANCE PROCEDURES

### 1. M/WBE Utilization Forms and Related Documentation

- a. Each Contractor must submit for all solicitations, bids or proposals, qualifications completed and signed M/WBE utilization forms as outlined below to be considered responsive. If the Contract Specific Goal is 0% and no M/WBE participation is proposed, including no M/WBE self-performance, the required forms should be noted as "Not Applicable". Note that Requests for Proposals and/or Qualifications include Business Diversity Evaluation Criteria which must be responded to in the proposal even if the Contract Specific Goal is 0%.

### 2. Request for Bids (RFB) – Goods and Services

- a. **Commitment to M/WBE Participation** must be submitted at the time of bid submission.
- b. **Final Schedule of Subcontractors** must be submitted at the time of bid submission.
- c. **Certification Certificates** must be submitted at the time of bid submissions for each certified subcontractor listed on the Final Schedule of Subcontractors.
- d. **Intent to Perform as a Subcontractor** must be submitted at the time of bid submission for each certified subcontractor identified on the Final Schedule of Subcontractors.
- e. **Good Faith Effort Documentation** must be submitted at the time of bid submission if the Contractor fails to meet the Contract Specific Goal.

### 3. Request for Bids (RFB) – Construction

- a. **Commitment to M/WBE Participation** must be submitted at the time of bid submission.
- b. **Preliminary Schedule of Subcontractors** must be submitted at the time of bid submission.
- c. **Certification Certificates** must be submitted at the time of bid submissions for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
- d. **Intent to Perform as a Subcontractor** must be submitted at the time of bid submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary



Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.

- e. **Final Schedule of Subcontractors** shall be submitted within three (3) business days from the date of the bid opening or with the bid verification.
  - f. **Good Faith Effort Documentation** must be submitted at the time of bid submission if the Contractor fails to meet the Contract Specific Goal.
4. Request for Qualifications (RFQ) – Architectural/Engineering Services, Design & Design Management Services
- a. **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
  - b. **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts. “To be determined” in lieu of a percentage is not acceptable.
  - c. **Certification Certificates** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule f Subcontractors.
  - d. **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
  - e. **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
  - f. **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
5. Request for Proposal (RFP) – Goods and Services including Best Value
- a. **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
  - b. **Preliminary Schedule of Subcontractors** must be submitted at the time of proposal submission. Contractor need list only the anticipated percentage of participation of M/WBEs rather than specific dollar amounts. “To be determined” in lieu of a percentage is not acceptable.
  - c. **Certification Certificates** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
  - d. **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.

- e. **Final Schedule of Subcontractors** must be submitted with the best and final offer and prior to processing an Official Board Action.
  - f. **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
6. Request for Proposal (RFP) for Construction-related Services procured through Indefinite Delivery: task/delivery order, Job Order Contracts, Construction Manager-at-Risk Services, Program Management/Construction Management services:
- a. **Commitment to M/WBE Participation** must be submitted at the time of proposal submission.
  - b. **Certification Certificate for Prime** must be submitted at the time of proposal submission if a certified Prime is claiming credit for self-performance.
  - c. **Compliance Plan**: a draft Compliance Plan using the Airport's template must be submitted at the time of proposal submission. The final Compliance Plan shall be required after the conclusion of the solicitation process as a component of contract negotiations and award.
  - d. **Good Faith Effort Documentation** must be submitted at the time of proposal submission if the Contractor fails to meet the Contract Specific Goal.
  - e. **Final Schedule of Subcontractors** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
  - f. **Certification Certificates for Subcontractors** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor listed on the Final Schedule of Subcontractors.
  - g. **Intent to Perform as a Subcontractor** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
7. Design Build
- a. **Commitment to M/WBE Participation (Construction)** must be submitted at the time of proposal submission.
  - b. **Commitment to M/WBE Participation (Design)** must be submitted at the time of proposal submission.
  - c. **Preliminary Schedule of Subcontractors (Design)** must be submitted at the time of proposal submission.

- d. **Certification Certificates (Design)** must be submitted at the time of proposal submission for each certified subcontractor listed on the Preliminary Schedule of Subcontractors.
  - e. **Final Schedule of Subcontractors (Design)** must be submitted with the best and final offer.
  - f. **Intent to Perform as a Subcontractor (Design)** must be submitted at the time of proposal submission for each certified subcontractor identified on the Preliminary Schedule of Subcontractors. Changes from the Preliminary Schedule of Subcontractors to the Final Schedule of Subcontractors may result in the submission of new Intent to Perform as a Subcontractor forms.
  - g. **Compliance Plan (Construction)** a draft Compliance Plan must be submitted at the time of proposal submission. The final Compliance Plan shall be submitted after the conclusion of the solicitation process as a component of contract negotiations and award.
  - h. **Final Schedule of Subcontractors (Construction)** must be submitted with each price proposal when a delivery order price proposal is requested from the Contracting Department.
  - i. **Certification Certificates (Construction)** must be submitted with the Final Schedule of Subcontractors for each certified subcontractor.
  - j. **Intent to Perform as a Subcontractor (Construction)** must be submitted with the final agreed-upon price proposal for each delivery order for each certified subcontractor.
  - k. **Good Faith Effort Documentation** If the Contractor fails to meet the M/WBE goal, the documentation must be submitted at the time of proposal submission.
8. Third Party Commercial Development or Concession Tenant Finish Out
- a. **Commitment to M/WBE Participation (Design)** must be submitted prior to processing an Official Board Action.
  - b. **Commitment to M/WBE Participation (Construction)** must be submitted prior to processing an Official Board Action.
  - c. **Preliminary Schedule of Subcontractors (Design)** must be submitted at the Airport's Initial Project Kick-Off Meeting.
  - d. **Final Schedule of Subcontractors (Design)** must be submitted at the Airport's Pre-Construction Meeting.
  - e. **Preliminary Schedule of Subcontractors (Construction)** must be submitted at the Airport's Pre-Construction Meeting.
  - f. **Final Schedule of Subcontractors (Construction)** must be submitted at the Airport's 50% construction-completion review meeting.

- g. **Accounting Reconciliation Statement** for the Contract must be submitted with the application for Certificate of Occupancy. A reconciliation statement shall include the total payments to the Prime Contractor and total payments made to each subcontractor listed on the Final Schedule of Subcontractors.
9. Any commitments to meet the Contract Specific Goal must be detailed on the **Commitment to Minority/Women Business Enterprise (M/WBE) Participation** form included with the bid/proposal. Submission of the form shall constitute a representation by the Contractor to the Airport Board that it commits to maintain the M/WBE participation level to which it committed to overall at the time of Contract award throughout the performance of the Contract. For contracts where the scope of work is defined and M/WBE subcontractors have been selected to perform a portion of the work, the Contractor also commits to maintain and/or exceed the percentage commitment to each individual M/WBE subcontractor.
10. The **Schedule of Subcontractors** form must list all subcontractors and suppliers the Contractor intends to use in performing the work of the project, including non-M/WBEs, and detail the preliminary/final percentage and dollar commitment of the Contractor to M/WBE participation. Only certified M/WBEs identified and the levels of participation listed for each at the time of bid/proposal submission will be considered in determining whether the Contractor has met the Contract Specific Goal. All M/WBEs must be properly certified under the guidelines of the CERTIFICATION section. Modifications, substitutions or termination of the M/WBEs identified must follow the guidelines of the M/WBE SUBSTITUTIONS OR TERMINATIONS section.
11. Submission of the **Intent to Perform as a Subcontractor** form for each M/WBE shall constitute a representation by the Contractor to the Airport Board that it believes such M/WBE to be certified as an M/WBE to perform the work as designated, the M/WBE has a place of business in the Airport Board's relevant market area and the M/WBE is not affiliated with the Contractor as defined herein. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter into a subcontract with such M/WBE for the work described at the approximate price and percentage set forth in the **Intent to Perform as a Subcontractor** form.
12. The Contractor shall enter into formal agreements with the M/WBE firms for work as indicated on the **Final Schedule of Subcontractors** and **Intent to Perform** forms within 10 (ten) business days after receipt of the Contract executed by the Airport Board or Notice to Proceed executed by the Airport Board. The Contractor, if requested, shall provide to BDDD copies of those agreements within 5 (five) business days of execution. BDDD reserves the right to review selected agreements at random.
13. If the M/WBE subcontractor information or status changes after the forms have been submitted but prior to award of the Contract (pre-award), the Contractor must immediately notify BDDD of the changes and a written explanation for the change by submitting a **Request for Approval of Change to Final Schedule of Subcontractors** form. No change in M/WBE participation after bid submission, but prior to Contract award, may change, or be deemed to change, the Contractor's submitted bid amount.
14. Post award, any substitution or termination of M/WBEs that occur after Contract award, must be processed using the Airport Board's Diversity Management

System and follow the M/WBE Program Policy and Administrative Procedures stated in the M/WBE SUBSTITUTIONS OR TERMINATIONS section.

15. Contractors must appoint and designate to BDDD a high-level official to administer and coordinate its contractual M/WBE commitments.
16. Alternative **Compliance Plan**
  - a. Contracts secured through a competitive selection process rather than a competitive bid process, the Vice President of BDDD may require proposers to address the project goal by means of a compliance plan. Such a plan allows a contract to address the project goal by means of commitments to utilize M/WBEs for Project work or by the demonstration of a good faith effort at the point where the project is sufficiently defined and the process of procuring the subcontractors to perform the work is about to begin.
  - b. The development, scope and utilization of such compliance plans will be governed by the following considerations and requirements.
  - c. Basis for Determination
    - i. Unless otherwise authorized in writing by the Vice President of BDDD, a department may only require proposers to address a project goal by means of a compliance plan under the following conditions:
      - A. The project solicitation must include the procurement of construction services.
      - B. At the time of solicitation, the project design must not be complete or at a level of completeness allowing for final competitive pricing proposal; and
      - C. The project solicitation must not require a lump sum price proposal or the construction of the project upon which a contract award will be made.
17. Development of Compliance Plan
  - a. Upon a determination that a compliance plan will be required for a project, the compliance plan shall be developed in accordance with the following requirements:
    - i. The Vice President of BDDD will require separate goals for project professional services and project construction services.
    - ii. The construction goal established for each project shall be expressed as a percentage of either:
      - A. The total amount of any lump sum construction contract awarded to complete a project
      - B. Total estimated "cost of work," as that term is defined in any guaranteed maximum price contract awarded to complete a project, or

C. On a task/work order

- b. The contracting department shall provide a good faith estimate of the construction cost upon which a goal shall be set, and the compliance plan proposer shall provide a refined estimate at the time of the submission of a proposed compliance plan, if the amount is not reflected in an executed contract.
  - c. BDDD shall establish a timetable for submittal and review of any proposed compliance plan. During the solicitation process as solicitation submittal requirement; and after the conclusion of the solicitation process as a component of contract negotiations and award.
  - d. Failure to comply with any submittal timetable established by BDDD may result in no further consideration of the proposed compliance plan.
18. Elements of a Compliance Plan. At a minimum, a proposed compliance plan shall address the following elements:
- a. To the maximum extent applicable, the proposed compliance plan shall comply with the requirements of the M/WBE Program Policy and Administrative Procedures.
  - b. The proposed compliance plan shall set forth a detailed program for community outreach and support calculated to enhance participation opportunities.
  - c. The proposed compliance plan shall set forth a detailed program describing how the proposer will divide up the anticipated work into economically feasible units calculated to enhance participation opportunities.
  - d. The proposed compliance plan shall set forth a detailed methodology by which the Contractor shall meet the project goal.
  - e. The proposed compliance plan may be based upon a phased or packaged buy out of the project construction work and, if that is the case, will describe the process by which the proposer will address the project goal on a phased, package, or cumulative basis.
  - f. If appropriate, the proposed compliance plan shall address the subcontracting of normally self-performed work to meet the project goal.
  - g. The proposed compliance plan shall set forth how the proposer will comply with the requirements of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions as part of the construction work, including use of Commitment forms, Intent to Perform, Schedule of Subcontractors forms or proposal pricing worksheet to adequately document committed participation attained.
  - h. The proposed compliance plan shall contain a specific acknowledgement of the proposer's continuing duty, pursuant to the M/WBE Program Policy and Administrative Procedures, and Contract Provisions to maintain, throughout the duration of any project contract, compliance with the level of participation committed to under any approved compliance plan, and

such commitment will be the basis for award of any contract. The plan will also detail the methodology the proposer will employ for maintain participation commitments.

- i. The proposed compliance plan shall set forth a detailed methodology for tabulation of participation performance and plan administration, as well as monitoring and reporting progress and participation performance to BDDD. The plan shall provide for review and reconciliation milestones during the project and for review and audit opportunities for BDDD.
- j. The proposed compliance plan will recommend methods for supporting BDDD administration and oversight of the plan, if approved.
- k. The proposed compliance plan will affirm that BDDD shall have prompt, full and complete access to all contractor and subcontractor personnel, books and records required to monitor and assure performance of the approved compliance plan. Additionally, the plan will acknowledge BDDD's right to impose withholding of payment in the event of noncompliance.
- l. The proposed compliance plan shall set forth a detailed methodology for issuance of notice(s) of non-compliance with the plan and a reasonable opportunity to cure.
- m. The proposed compliance plan shall set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.

19. Approval of Compliance Plan

- a. Upon receipt of a proposed compliance plan, BDDD shall review and either approve or initially reject, with comments, the proposed plan. In the event of a rejection of the proposed plan, the BDDD shall set a date for submission and if warranted, schedule a meeting to discuss any deficiencies that must be addressed in the re-submittal.
- b. In the event the Vice President of BDDD formally rejects a proposed compliance plan, the Vice President of BDDD shall notify the agency head in writing of its determination and such determination shall result in no further consideration of the contractor's proposal or in termination of the contract for cause, in the event a contract has been awarded. In no event shall a contract to construct a project be executed or continue without a compliance plan approved by the Vice President of BDDD.
- c. Upon approval, the compliance plan shall be incorporated and made a part of the contract with the plan proposer.

20. Compliance and Enforcement

- a. The Contractor shall be subject to the COMPLIANCE AND ENFORCEMENT section of the M/WBE Program Policy and Administrative Procedures and Contract Provisions. If upon approval, the Contractor acknowledges and accepts that any failure to comply with any material term or condition of an approved compliance plan or applicable provision of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions, including failure to satisfactorily address the

project goal, maintain participation commitments or otherwise comply with any applicable requirements.

G. PAYMENT

1. Monitoring Contractual Commitments and Payments to M/WBEs
  - a. It is Airport Board policy that all Contractor invoices in compliance with Contract payment terms and conditions be paid within 30 days of receipt.
  - b. All Contractors must comply with the Texas Prompt Pay Act (Chapter 2251; Texas Government Code) paying all sums, including retainage withheld from subcontractors, to subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities, including paying such persons or entities within 10 days of receiving payment from the Airport Board their appropriate share of such payment. No Contractor that has received payment of an undisputed amount from the Airport Board may withhold from any subcontractor its undisputed appropriate share of such payment.
  - c. No Contractor may withhold retainage from any subcontractor at a higher percentage rate than retainage is withheld by the Airport Board from Contractor. Except for the Texas Prompt Pay Act requirement that a Contractor release retainage to a subcontractor within 10 days of that subcontractor's invoice for retainage, each Contractor must withhold/release retainage from/to each subcontractor in at least the same manner as retainage is withheld/released by the Airport Board from/to Contractor (and must include provisions in its subcontracts ensuring this), including, but not limited to mirroring the Airport Board's treatment of retainage withheld/released to Contractor concerning the following subjects:
    - i. the percentage amount of retainage withheld/released;
    - ii. the schedule for withholding/releasing retainage;
    - iii. the phased release of retainage according to any phased completion (substantial/final) of portions of the project;
    - iv. the optional cessation of withholding retainage prior to substantial/final completion of, or final payment for, the project (e.g. optional cessation when 50% of project is substantially complete, with an owner's right to resume withholding retainage upon the occurrence of certain events);
    - v. the release of retainage prior to final payment, less an amount withheld to cover a percentage of the value of punch-list work required before final completion is certified (e.g. retention of 200% of the value of punch-list work pending certification of final completion).
  - d. Each Contractor must address (and implement) in its subcontracts the retainage provisions so that each subcontractor is treated by the Contractor in the same manner as Airport Board treats the Contractor. Nothing in this provision precludes a Contractor from including in its



subcontracts retainage provisions that are more favorable than those contained in the Contract between Airport Board and Contractor, including, but not limited to, provisions withholding retainage at a lesser percentage rate, releasing retainage in part/whole earlier than retainage released by Airport Board and/or withholding less retainage than Airport Board withholds to cover the value of punch-list work required to be completed before final completion certification.

- e. DFW encourages all Contractors and their subcontractors, subconsultants, vendors, materialmen, suppliers and similar persons or entities to make payment of invoices submitted to them more expeditiously than required under the Texas Prompt Pay Act.
- f. Payment by a Contractor in violation of the terms of the Contract or applicable law will constitute a material breach of this Contract.
- g. BDDD may withhold progress payments until the Contractor demonstrates compliance with the payment terms of this Contract or applicable law, including withholding progress payments solely relating to monies payable to Contractor for work it self-performs or associated retainage.
- h. The Airport Board may also exercise any other rights or remedies available to it under this Contract or applicable law if Contractor fails to comply with the payment terms of this Contract or applicable law.
- i. In an effort to remove the race- and gender-neutral barrier of the length of time for subcontractor payments on Airport Board procurements, the Airport Board has an Expedited Payment Policy for eligible Contractors that may elect to voluntarily participate in. This policy is applicable if a Contractor has been awarded a multi-year Contract for construction and/or maintenance services of at least \$10,000,000 in Contract value. The Expedited Payment program requires those eligible Contractors that voluntarily participate in the program to pay their subcontractors within seven (7) calendar days after receipt of the subcontractor's invoice. The Airport Board would then pay interest and provide other incentives to the Contractor on eligible expedited payments according to the Expedited Payment Process and Policy. The terms for Expedited Payment will be negotiated prior to the issuance of the Notice to Proceed.
- j. To ensure that the Contractor meets its M/WBE contractual commitment, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions from the original Contract period. The M/WBE commitment is determined by the total M/WBE utilization in relation to the total dollar value of contract as paid to the Prime Contractor. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit verifying information as outlined below, concurrent with the Contractor's submission of each payment request. The information provided will be utilized to provide constant monitoring of the payments made to the M/WBE as well as non-M/WBE subcontractors in relation to the percentage of work performed. Failure to submit this information with the payment request will result in the invoice being returned to the Contractor. The Prime Contractor can be determined to be non-compliant, if utilization commitments to individual M/WBE subcontractors are not achieved, even if the total M/WBE contractual commitment is being met by disproportionate M/WBE

subcontractor utilization not originally listed by the Prime Contractor's Final Schedule of Subcontractors and Intent to Perform forms without a sufficient modified Good Faith Effort justification.

- i. As of 2012, Contractors with new Contracts are required to report all payments online utilizing the Airport Board's Diversity Management System (B2Gnow) and submit a Compliance Audit Summary with each payment request. The Compliance Audit Summary confirmation is a print out of what was entered into the system.
  - ii. Contracts prior to 2012, are required to submit the original Pay Period Activity Report form with the payment request, unless they choose to report online, when then defaults to Paragraph j.i.
2. Training for the Airport Board's Diversity Management System: The Contractor is responsible for ensuring its employees who are processing payment requests on its company's behalf are trained on the Airport Board's Diversity Management System (B2Gnow). This includes all subcontractors who the Contractor will be utilizing on the contract and will be verifying reported sub payments online.
3. Contract Close Out: To ensure that the Contractor meets all its M/WBE contractual commitments, BDDD will review the Contractor's M/WBE utilization throughout the term of the Contract, including any term extensions of the original Contract period, prior to receiving final payment.
  - a. If a Contract includes an M/WBE contractual commitment, the Contractor must report all M/WBE payments using the Airport Board's Diversity Management System and submit a Final B2Gnow Compliance Audit Summary concurrent with the Contractor's submission of final payment request.
  - b. Once all sub payments have been verified by the subcontractors in the Airport Board's Diversity Management System, the contract will be reviewed for compliance with the program requirements and the prime Contractor's M/WBE contractual commitment.
  - c. The Contractor 's performance will be reviewed, and a satisfactory/unsatisfactory determination will be provided in writing to the Contractor by BDDD.
  - d. A Contractor's unsatisfactory determination may result in future bids or proposals being deemed non-responsive. In determining whether a future bid or proposal will be deemed non-responsive, BDDD will take into consideration the following: circumstances for non-compliance, the length of the period of non-compliance and the history of previous unsatisfactory determinations.
4. Dispute Resolution: BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution

procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD.

5. On-Site Inspections: Compliance monitoring may also include on-site inspections. The Contractor is responsible for providing BDDD, if requested, a project work scheduler together with a list of all subcontractors for the scheduled work.
6. All reports of noncompliance will be referred by BDDD to the contract administrator, and if appropriate, to the Legal Department.

#### H. M/WBE SUBSTITUTIONS OR TERMINATIONS

1. If change orders, amendments or any other Contract modifications are issued under the Contract, the Contractor has a continuing obligation to immediately inform BDDD in writing of any agreed upon increase or decrease in the scope of work of such Contract that impact the participation of M/WBEs on the contract.
2. If change orders or other Contract modifications are issued under the Contract that include an increase in the scope of work whether by amendment, change order, force account or otherwise which increases or decreases the dollar value of the Contract, whether or not such change is within the scope of work designated for performance by an M/WBE at the time of Contract award, then such amendment, change order or other modification must be contemporaneously submitted to BDDD. The Contractor must make good faith efforts to meet its M/WBE contractual commitment with existing M/WBEs first. If the Contractor is unable to meet its M/WBE contractual commitment with existing M/WBEs, the Contractor shall satisfy its commitment, as it relates to changed scope of work, modifications, and or amendments, by soliciting new M/WBEs and must submit a ***Request for Approval of Change to Final Schedule of Subcontractors***, through the Airport Board's Diversity Management System and must be approved in writing by BDDD.
3. The Contractor cannot terminate, substitute or otherwise change the terms of its Final Schedule of Subcontractors prior to or after Contract award without the prior written consent of BDDD. This includes, but is not limited to, instances in which the Contractor seeks to perform work originally designated for an M/WBE subcontractor with its own forces or those of an affiliate, a non-M/WBE or another M/WBE.
  - a. The Contractor shall utilize the specific M/WBEs listed in the Final Schedule of Subcontractors to perform the work and supply the materials for which each is listed unless the Contractor obtains BDDD written consent as provided in this section; and
  - b. The Contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed M/WBE.
  - c. The Contractor shall document good cause to terminate or substitute an M/WBE. For purposes of this paragraph, good cause includes the following circumstances:
    - i. The listed M/WBE subcontractor fails or refuses to execute a written Contract.

- ii. The listed M/WBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the M/WBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the Contractor.
  - iii. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements.
  - iv. The listed M/WBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
  - v. The listed M/WBE subcontractor is ineligible to work on public works projects because of suspension and applicable state law.
  - vi. It has been determined that the listed M/WBE subcontractor is not a responsible Contractor.
  - vii. The listed M/WBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
  - viii. The listed M/WBE is ineligible to receive M/WBE credit for the type of work required.
  - ix. An M/WBE owner dies or becomes disabled with the result that the listed M/WBE contractor is unable to complete its work on the Contract.
  - x. Other documented good cause that BDDD determines compels the termination of the M/WBE subcontractor. Provided, that good cause does not exist if the Contractor seeks to terminate an M/WBE it relied upon to obtain the Contract so that the Contractor can self-perform the work for which the M/WBE subcontractor was engaged or so that the Contractor can substitute another M/WBE or non-M/WBE subcontractor after Contract award.
- d. Before transmitting to BDDD its request to terminate and/or substitute an M/WBE subcontractor, the Contractor must give notice in writing to the M/WBE subcontractor, with a copy to BDDD, of its intent to request to terminate and/or substitute, and the reason for the request.
  - e. The Contractor must give the M/WBE subcontractor five business days to respond to the Contractor's notice. The M/WBE subcontractor must advise BDDD and the Contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why BDDD should not approve the Contractor's action. If required in a particular case as a matter of public necessity (e.g. safety), BDDD may provide a respond period shorter than five days.
4. In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for M/WBE firms put forward by bidders/proposals in bids/proposals.
- a. When an M/WBE subcontractor is terminated as provided in this section or fails to complete its work on the contract for any reason, the Contractor

shall make good faith efforts to find another M/WBE subcontractor to substitute for the original M/WBE. These good faith efforts shall be directed at finding another M/WBE to perform at least the same amount of work under the contract as the M/WBE that was terminated, to the extent needed to meet the M/WBE commitment established for the Contract. The good faith efforts shall be documented by the Contractor. The Contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the Contractor, and BDDD shall provide a written determination to the Contractor stating whether or not good faith efforts have been demonstrated.

5. The Contractor must submit an ***Intent to Perform as a Subcontractor*** form for each proposed new M/WBE subcontractor. BDDD will approve or disapprove the substitution based on the Contractor's documented compliance with these provisions.
6. All changes to the ***Schedule of Subcontractors*** form must be submitted for review and approval through the Airport Board's Diversity Management System utilizing the ***Request for Approval of Change to Final Schedule of Subcontractors*** form when adding, changing, or deleting any subcontractor.
7. Failure by the Contractor to carry out the requirements of this section is a material breach of the Contract and may result in the termination of the Contract or such other remedies set forth in Compliance and Enforcement section.

#### I. COMPLIANCE AND ENFORCEMENT

1. These provisions address the additional contractual remedies available to the Airport Board as a result of the Contractor's failure to comply with the obligations set forth in the M/WBE Program Policy and Administrative Procedures. The contractual remedies set forth are also applicable to the Contractor's failure to comply with the Program requirements, as well as any remedies available at law or in equity. These remedies are not intended to apply to the Contractor's failure to comply with other obligations under the Contract unrelated to the Program requirements or preclude Airport Board's recovery of its actual damages for such unrelated breaches.
2. The Contractor must attend and participate in onboarding, progress, non-compliance meetings and site visits upon request. The Contractor must forward all necessary documents and information during the course of performance and to close out the Contract and must cooperate with BDDD in providing any information, including the final accounting for M/WBE participation on the Contract.
3. BDDD is empowered to receive and investigate complaints and allegations by M/WBEs, third parties or Airport Board Staff, or to initiate its own investigations, regarding Contractor's compliance with the Program requirements. If BDDD determines that an investigation is warranted, the Contractor must fully cooperate with the investigation and provide complete, truthful information to the Airport Board or its representatives concerning the investigation and Contractor's compliance with the Program requirements.
4. The failure of the Contractor to meet the M/WBE contractual commitment or comply with any other aspect of the Program requirements will constitute a material breach of the Contract entitling the Airport Board or its representatives to exercise any remedy available in this Contract, the Program requirements or applicable law. In addition, the failure of the Contractor to meet the M/WBE contractual

commitment or comply with any other aspect of the Program requirements may be considered and have a bearing on future contract award considerations.

5. Any suspected false, fraudulent or dishonest conduct relating to the Contractor's performance of the Program requirements may be reported to the Airport Board's Department of Audit Services or to any applicable enforcement agency, including the State Attorney General's Office and appropriate federal law enforcement authorities.
6. If Contractor is in breach of any of the Program requirements, the Airport Board or its representatives may exercise any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
  - a. withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
  - b. temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
  - c. termination of the Agreement/Contract;
  - d. suspension/debarment of Contractor for a period of time from participating in any solicitations issued by DFW for severity of breach of Contract.
7. With respect to a firm not meeting a goal on a previous contract or the underutilization of an M/WBE (or SBEs, if applicable) on a previous contract, BDDD shall regard as non-responsive any bid, proposal or competitive selection process proposal received that includes the Contractor, consultant as a Contractor, consultant, subcontractor, subconsultant, joint venture, supplier, manufacturer's representative, or broker.
8. With respect to M/WBE firms, a finding of non-compliance could result in a denial of certification or removal of eligibility and/or suspension and debarment.

*(End of M/WBE Special Contract Provisions)*



**COMMITMENT TO MINORITY/WOMEN  
BUSINESS ENTERPRISE (M/WBE) PARTICIPATION FORM**  
*(This form is required as part of the bid/proposal submission.)*

The M/WBE goal for Solicitation/Contract # \_\_\_\_\_ is \_\_\_\_\_ %.

**NOTE:** *The BDDD will only credit M/WBE participation that is certified by an approved certification entity at the time of bid/proposal submission. DBE/SBE certificates are not accepted for M/WBE credit. Effective 06/01/2020, in addition to having a valid certification, M/WBEs must also have a place of business in the Airport's market area<sup>1</sup> at the time of bid/proposal submission for credit towards meeting a contract goal.*

The undersigned Contractor has satisfied the requirements of the bid/proposal specifications in the following manner (Please check ( ✓ ) the appropriate space):

- \_\_\_\_\_ Self-Performance: The proposer, a certified M/WBE firm, is committed to meeting or exceeding the M/WBE goal through self-performance.
- \_\_\_\_\_ Self-Performance & Percentage Participation: The proposer, a certified M/WBE firm, is committed to meeting or exceeding the M/WBE goal, with a minimum of \_\_\_\_\_% self-performance and a minimum of \_\_\_\_\_% M/WBE subcontracting participation on this contract.
- \_\_\_\_\_ Percentage Participation: The proposer is committed to meeting or exceeding the M/WBE goal, with a minimum of \_\_\_\_\_% M/WBE subcontracting participation on this contract.
- \_\_\_\_\_ The Contractor is unable to meet the M/WBE goal of \_\_\_\_\_% and is committed to a minimum of \_\_\_\_\_% M/WBE utilization on this contract and submits documentation demonstrating good faith efforts.
- \_\_\_\_\_ The Contractor is unable to meet the M/WBE goal of \_\_\_\_\_% and submits documentation demonstrating good faith efforts.

Name of Prime Contractor: \_\_\_\_\_

\_\_\_\_\_  
Signature Title

\_\_\_\_\_  
Printed Name Date

<sup>1</sup> The Airport's market area is defined as Dallas, Tarrant, Collin and Denton counties.



## SCHEDULE OF SUBCONTRACTORS (PRELIMINARY)

Prime Bidder/Contractor: \_\_\_\_\_  
 MBE  WBE  NON-M/WBE

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_

As part of the procedures for the submission of a completed bid/proposal, all bidders/proposers are required to identify ALL participating subcontractors applicable to the above project and include this completed form as part of the bid. Check all Certification Status categories that apply to each subcontractor. Verify that the proposed M/WBE subcontractor has a place of business in the Airport's Relevant Market Area<sup>3</sup> (not applicable to DBE goals). **NOTE: Certification certificate(s) MUST be attached to this form or bid/proposal will be deemed non-responsive.** The submission of this information is considered an issue of responsiveness, and the Airport Board will not award a contract to any Contractor who has not supplied this documentation. Use additional sheets if necessary.

| Name of Subcontractor(s) | Certification Status <sup>2</sup><br>(check the applicable)  |     |     | Relevant Market Area <sup>3</sup><br>COUNTY | Description of Material or Service Being Provided or Performed | NAICS Commodity Code | Dollar Amount and Percentage of Work |      |
|--------------------------|--|-----|-----|---|--|----------------------|--------------------------------------|------|
|                          | MBE  | WBE | NON |   |  |                      | \$\$\$                               | %    |
|                          |  |     |     |   |  |                      |                                      |      |
|                          |  |     |     |   |  |                      |                                      |      |
|                          |  |     |     |   |  |                      |                                      |      |
|                          |  |     |     |   |  |                      |                                      |      |
|                          | Dollar Amount & Percentage: Work to be completed by Non-M/WBE Subcontractors   |     |     |   |  |                      |                                      |      |
|                          | Dollar Amount & Percentage: Work to be completed by M/WBE Subcontractors   |     |     |   |  |                      |                                      |      |
|                          | Dollar Amount & Percentage: Work to be self-performed by the Prime   |     |     |   |  |                      |                                      |      |
|                          | <b>Total Dollar Amount &amp; Percentage of Work</b><br>(The Total Amount shall equal the amount proposed on summary of bid/proposal page). |     |     |   |  |                      |                                      | 100% |

### PRIME CONTRACTOR'S CERTIFICATION

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that if awarded the contract, this certification shall be attached thereto and become a part thereof. Failure to provide accurate and complete information or exercise positive, good faith efforts (as defined by the Board's M/WBE Program) in support of the Board's minority/woman-owned business intent and objective may result in being considered non-responsive to the Board's requirements. Furthermore, it is understood and agreed that, if awarded a contract by the Airport Board, the Contractor will not make additions, deletions or substitutions to this certified list of M/WBE subcontractors without the consent of the Board's Vice President of Business Diversity & Development Department (BDDD) or designee through the submittal of the *Form 102, Request for Approval of Change to Final Schedule of Subcontractors* if this is determined to be the final schedule. The BDDD reserves the right to ensure compliance with the Board's M/WBE programs as deemed necessary including but not limited to audits of submitted M/WBE information applicable to the Contractor/subcontractors participating on the contract.

Name and Title of Authorized Representative \_\_\_\_\_  
 (Please print or type)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime Contractor on an Airport contract at any tier.

<sup>2</sup> In order to credit the participation of minority and woman-owned businesses, firms must be certified as M/WBEs by a certification agency approved by the Airport Board as defined in the M/WBE Policies and Administrative Procedures.

<sup>3</sup> In addition to having a valid certification, the M/WBE must have a place of business in the Airport's relevant market area at the time the bid/proposal is submitted for credit towards meeting an M/WBE goal.





## SCHEDULE OF SUBCONTRACTORS (FINAL)

Prime Bidder/Contractor: \_\_\_\_\_  
 MBE  WBE  NON-M/WBE

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_

As part of the procedures for the submission of a completed bid/proposal, all bidders/proposers are required to identify ALL participating subcontractors applicable to the above project and include this completed form as part of the bid. Check all Certification Status categories that apply to each subcontractor. Verify that the proposed M/WBE subcontractor has a place of business in the Airport's Relevant Market Area<sup>3</sup> (not applicable to DBE goals). **NOTE: Certification certificate(s) MUST be attached to this form or bid/proposal will be deemed non-responsive.** The submission of this information is considered an issue of responsiveness, and the Airport Board will not award a contract to any Contractor who has not supplied this documentation. Use additional sheets if necessary.

| Name of Subcontractor(s) | Certification Status <sup>2</sup><br>(check the applicable)  |     |     | Relevant Market Area <sup>3</sup><br>COUNTY | Description of Material or Service Being Provided or Performed | NAICS Commodity Code | Dollar Amount and Percentage of Work |      |
|--------------------------|--|-----|-----|---|--|----------------------|--------------------------------------|------|
|                          | MBE  | WBE | NON |   |  |                      | \$\$\$                               | %    |
|                          |  |     |     |   |  |                      |                                      |      |
|                          |  |     |     |   |  |                      |                                      |      |
|                          |  |     |     |   |  |                      |                                      |      |
|                          |  |     |     |   |  |                      |                                      |      |
|                          | Dollar Amount & Percentage: Work to be completed by Non-MWBE Subcontractors  |     |     |   |  |                      |                                      |      |
|                          | Dollar Amount & Percentage: Work to be completed by M/WBE Subcontractors   |     |     |   |  |                      |                                      |      |
|                          | Dollar Amount & Percentage: Work to be self-performed by the Prime   |     |     |   |  |                      |                                      |      |
|                          | <b>Total Dollar Amount &amp; Percentage of Work</b><br>(The Total Amount shall equal the amount proposed on summary of bid/proposal page). |     |     |   |  |                      |                                      | 100% |

### PRIME CONTRACTOR'S CERTIFICATION

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that if awarded the contract, this certification shall be attached thereto and become a part thereof. Failure to provide accurate and complete information or exercise positive, good faith efforts (as defined by the Board's M/WBE Program) in support of the Board's minority/woman-owned business intent and objective may result in being considered non-responsive to the Board's requirements. Furthermore, it is understood and agreed that, if awarded a contract by the Airport Board, the Contractor will not make additions, deletions or substitutions to this certified list of M/WBE subcontractors without the consent of the Board's Vice President of Business Diversity & Development Department (BDDD) or designee through the submittal of the *Form 102, Request for Approval of Change to Final Schedule of Subcontractors* if this is determined to be the final schedule. The BDDD reserves the right to ensure compliance with the Board's M/WBE programs as deemed necessary including but not limited to audits of submitted M/WBE information applicable to the Contractor/subcontractors participating on the contract.

Name and Title of Authorized Representative \_\_\_\_\_  
 (Please print or type)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime Contractor on an Airport contract at any tier.

<sup>2</sup> In order to credit the participation of minority and woman-owned businesses, firms must be certified as M/WBEs by a certification agency approved by the Airport Board as defined in the M/WBE Policies and Administrative Procedures.

<sup>3</sup> In addition to having a valid certification, the M/WBE must have a place of business in the Airport's relevant market area at the time the bid/proposal is submitted for credit towards meeting an M/WBE goal.

# INTENT TO PERFORM CONTRACT AS A M/WBE SUBCONTRACTOR<sup>1</sup> (Rev 07-01-2020)

Submission of the **Intent to Perform as a M/WBE Subcontractor** form for each M/WBE firm shall constitute a representation by the Prime Contractor to the Airport Board that it believes such M/WBE to be certified as a M/WBE to perform the work as designated, the M/WBE has a place of business in the Airport Board's market area and the M/WBE is not affiliated with the Contractor as defined herein. It shall also represent a commitment by the Contractor that if it is awarded the Contract, it will enter in a subcontract with such M/WBE for the work described at the approximate price and percentage set forth.

| PRIME CONTRACTOR / CONSULTANT   |  |  |  |
|---|--|--|--|
| Contract / Solicitation Number:   |  |  |  |
| Name of Prime Contractor:   |  |  |  |
| Address, City, State and Zip Code:  |  |  |  |
| The Prime Contractor designates the following person as their high-level official designated to administer and coordinate the efforts to carry out the M/WBE policy on behalf of the Prime Contractor.  |  |  |  |
| Name:   |  | Title:   |  |
| E-Mail Address:   |  | Phone Number:  |  |
| DECLARATION OF PRIME CONTRACTOR   |  |  |  |
| I HEREBY DECLARE AND AFFIRM that as a duly authorized representative of the Prime Contractor stated above, I have personally reviewed the material and facts set forth in this form. To the best of my knowledge, information and belief, the facts and representations contained in this form are true and the owner or authorized agent of the M/WBE firm stated above signed this form in the place indicated, and no material facts have been omitted. The undersigned affirms that the Prime Contractor has no ownership or financial interest in the M/WBE subcontracting firm stated below. Except as authorized by the Vice President of Business Diversity & Development Department or his designee, the undersigned shall enter into a formal agreement (which shall include all audit and records provisions required by the Board) with the listed M/WBE firm for work as indicated by this form within ten (10) business days after receipt of the contract executed by the Airport. The undersigned will, if requested, provide said Vice President or his designee a copy of that agreement within five (5) business days of the written request. Pursuant to State Law, any person [entity] who makes a false or fraudulent statement in connection with the participation of a M/WBE in any locally funded project or otherwise violates applicable program requirements may be referred for prosecution.  |  |  |  |
| Signature of Prime Contractor:  |  | Date:  |  |
| M/WBE SUBCONTRACTOR / SUBCONSULTANT / SUPPLIER AT ANY TIER  |  |  |  |
| The Airport requires that minority/women business enterprises be certified as M/WBEs by an approved certification agency as defined in the M/WBE Program Policy and Procedures. Effective 06-01-2020, in addition to having a valid certification, M/WBEs must have a place of business in the Airport's market area <sup>1</sup> at the time of bid/proposal submission for credit towards meeting a contract goal.  |  |  |  |
| The undersigned M/WBE subcontractor has a place of business in the Airport's market area.   |  | <input type="checkbox"/> Yes <input type="checkbox"/> No |  |
| The undersigned M/WBE subcontractor is not affiliated with the Prime Contractor as defined in the M/WBE Program Policies and Procedures.  |  | <input type="checkbox"/> Yes <input type="checkbox"/> No |  |
| Name of M/WBE Subcontractor:  |  |  |  |
| Address, City, State and Zip Code:  |  |  |  |
| Contact Person:   |  |  |  |
| E-Mail Address:   |  | Phone Number:  |  |
| Scope of Work: (where applicable specify "supply" or "install" or both)   |  |  |  |
| Price and Percentage:   |  | \$ _____ ( _____ %)                                      |  |
| M/WBE Certification #:  |  | Certification Agency:                                    |  |
| If the M/WBE shown above is not a direct first tier subcontractor, subconsultant or supplier to the Prime Contractor shown above, please indicate the name of the subcontractor, subconsultant or supplier <u>and</u> tier level that will be utilizing your participation for M/WBE credit.  |  |  |  |
| Percentage (%) of the proposed subcontract described above will be sublet and/or awarded to a Non-M/WBE subcontractor. <b>(Complete this box ONLY if subcontracting to a Non-M/WBE subcontractor.)</b>  |  | _____ %  |  |
| DECLARATION OF M/WBE SUBCONTRACTOR  |  |  |  |
| I HEREBY DECLARE AND AFFIRM that as a duly authorized representative of the Subcontractor stated above, the facts and representations contained in this form are true. The undersigned affirms that the Prime Contractor has no ownership or financial interest in the M/WBE subcontracting firm stated above. I also agree, for good and valuable consideration (including the opportunity to participate in this solicitation as a proposed subcontractor), the receipt and sufficiency of which is hereby acknowledged, that if the Subcontractor performs any work for the Prime Contractor as the result of a contract awarded to the Prime Contractor for this solicitation, the Subcontractor will maintain and the Board shall have the right to examine and make copies of all records, documents, books, statements, checks, invoices, and any other supporting evidence deemed necessary by the Board to substantiate compliance with the terms of this Contract, including any Change Orders. Such right of examinations shall include, but not be limited to, reasonable access to and cooperation by all Subcontractor personnel. Subcontractor agrees to provide the Board with retrievals of computer-based records or transactions that the Board determines to be necessary to conduct any audits. Subcontractor agrees that there shall be no charge to the Board for Subcontractor's costs of providing records, documents, and assistance for audits, and to provide to the Board within seven (7) calendar days all records, documents, retrievals, and other assistance requested. |  |  |  |
| Signature of M/WBE Subcontractor  |  | Date:  |  |

<sup>1</sup> Any named person, firm, partnership, corporation, association or joint venture as herein provided identified as providing work, labor, services, supplies, equipment, materials or any combination of the foregoing, under contract to a prime contractor on an Airport contract at any tier.  
<sup>2</sup> The Airport's market area is defined as the North Texas Commission twelve-county area of Dallas, Tarrant, Collin and Denton counties.



### GOOD FAITH EFFORT (GFE) Criteria

NOTE: Include a response to GFE criteria and support documentation in bid/proposal only if the M/WBE goal is not achieved.

The following factors are taken into account when assessing a good faith effort response. These factors are minimally considered as good faith efforts and demonstrate specific initiatives made in attempting to achieve the applicable contract-specific Minority/Women Business Enterprise (M/WBE) goal. These factors should not be considered as a template, checklist or some quantitative formula. Proposers are required to meet all factors outlined below and provide support documentation in order for the good faith effort plan to be assessed. Mere pro forma efforts are not good faith efforts to meet the M/WBE contract requirements. This means that a bidder/proposer must show that it took all necessary and reasonable steps to achieve an M/WBE goal or other requirement of this GFE which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient M/WBE participation, even if they were not fully successful. DFW will evaluate the GFE on quality, quantity, and intensity of the different kinds of efforts that the bidder/proposer has made, based on the regulations and the guidance in Code of Federal Regulations. **NOT SUBMITTING PROPER SUPPORT DOCUMENTATION IS NOT EVIDENCE OF A PROPER DEMONSTRATION OF GOOD FAITH EFFORT. SUBMITTAL OF THE CRITERIA, WITH NO ADDITIONAL DOCUMENTATION, WILL NOT BE CONSIDERED ADEQUATE DEMONSTRATION OF GOOD FAITH EFFORT.** Proposers are not limited to these particular areas and may include other efforts deemed appropriate. Complete form and attach support documentation only if the M/WBE goal is not achieved. For additional guidance concerning Good Faith Efforts, please refer to the Electronic Code of Federal Regulations (CFR 49 part 26 Appendix A).

| GOOD FAITH EFFORT FACTORS   |
|---|
| Conducting market research to identify small business contractors and suppliers and solicit through all reasonable and available means the interest of all certified M/WBEs that have the capability to perform the work of the contract. This may include attendance at any pre-bid or pre-proposal meetings to discuss subcontracting and supplier opportunities (acceptable documentation shall include copies of the meeting sign-in sheets with contractor name noted as signed-in) and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all M/WBEs listed in the State and/or Local respective directories of firms that specialize in the areas of work desired (as noted in the M/WBE directory) and which are located in the area or surrounding areas of the project. <i>The Contractor should solicit this interest as early in the acquisition process as practicable to allow the M/WBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the M/WBEs are interested in taking appropriate steps to follow up initial solicitations at least three (3) business days prior to bid opening.</i> |
| Selecting portions of the work to be performed by M/WBEs in order to increase the likelihood that the M/WBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate M/WBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates M/WBE participation.   |
| Providing interested M/WBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.   |
| Negotiating in good faith with interested M/WBEs. It is the bidder's responsibility to make a portion of the work available to M/WBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available M/WBE subcontractors and suppliers, so as to facilitate M/WBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of M/WBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for M/WBEs to perform the work.  |
| A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including M/WBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using M/WBEs is not in itself sufficient reason for a bidder's failure to meet the contract M/WBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from M/WBEs if the price difference is excessive or unreasonable.  |



|   |
|---|
| <p>Not rejecting M/WBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the M/WBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals. <i>A prime contractor's inability to find a replacement M/WBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original M/WBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement M/WBE, and it is not a sound basis for rejecting a prospective replacement M/WBE's reasonable quote.</i></p> |
| <p>Making efforts to assist interested M/WBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.</p>   |
| <p>Making efforts to assist interested M/WBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.</p>   |
| <p>Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of M/WBEs.</p>   |
| <p>At a minimum, DFW will review the performance of other bidders/proposers in meeting the contract goal. For example, when the apparent successful bidder/proposer fails to meet the contract goal, but others meet it, DFW may reasonably raise the question of whether, with additional efforts, the apparent successful bidder/proposer could have met the goal. As provided in §26.53(b)(2)(vi), the bidder must submit copies of each M/WBE and non-M/WBE subcontractor quote submitted to the bidder when a non-M/WBE subcontractor was selected over a M/WBE for work on the contract to review whether M/WBE prices were substantially higher; and contact the M/WBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to M/WBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.</p>   |
| <p>A promise to use M/WBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.</p>  |

**FOR DFW BUSINESS DIVERSITY & DEVELOPMENT USE ONLY:**

Plan Reviewed by: \_\_\_\_\_

Date: \_\_\_\_\_

Signature of M/WBE Business Specialist/Manager: \_\_\_\_\_

Recommendation: Approval: \_\_\_\_\_ Denial: \_\_\_\_\_



## REQUEST FOR APPROVAL OF CHANGE TO ORIGINAL SCHEDULE OF SUBCONTRACTORS

Contract/Solicitation Number \_\_\_\_\_

Project Name \_\_\_\_\_

Contractor Name \_\_\_\_\_, requests approval of the following addition(s) and/or deletion(s) on the **SCHEDULE OF SUBCONTRACTORS (M/WBE Form No. 90)**, as originally submitted as part of the bid/proposal on the above-named project.

### CHANGE

Check (X) block for each transaction.

| ADD | DELETE | COMPANY NAME | TRADE | M/WBE STATUS | RELEVANT MARKET AREA COUNTY | DOLLAR AMOUNT |
|-----|--------|--------------|-------|--------------|-----------------------------|---------------|
|     |        |              |       |              |                             |               |
|     |        |              |       |              |                             |               |
|     |        |              |       |              |                             |               |
|     |        |              |       |              |                             |               |
|     |        |              |       |              |                             |               |
|     |        |              |       |              |                             |               |

### JUSTIFICATION

The Contractor must demonstrate good cause to terminate or substitute the M/WBE and seek BDDD approval prior to taking any termination or substitution action. Good cause includes the following circumstances: 1. The listed M/WBE subcontractor fails or refuses to execute a written contract. 2. The listed M/WBE subcontractor fails or refuses to meet the Contractor's reasonable, nondiscriminatory bond requirements. 3. The listed M/WBE subcontractor becomes bankrupt, insolvent or exhibits credit unworthiness. 4. The listed M/WBE is ineligible to work on Airport projects because of suspension and debarment proceedings pursuant to federal or state law or other applicable laws or regulations. 5. BDDD has determined that the listed M/WBE subcontractor is not a responsible contractor. 6. The listed M/WBE subcontractor voluntarily withdraws from the project and provides BDDD written notice of its withdrawal. 7. The listed M/WBE subcontractor is ineligible to receive credit for the type of work required. 8. The M/WBE owner dies or becomes disabled with the result that the listed M/WBE subcontractor is unable to complete its work on the Contract. 9. Other good cause as determined in BDDD's sole discretion. Attach additional sheets as necessary.

|  |
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### CERTIFICATION OF AFFIDAVIT

The above information is true and complete to the best of my knowledge and belief. I further understand and agree that this certification shall become a part of my contract with the Dallas/Fort Worth International Airport Board.

Name of Authorized Representative: \_\_\_\_\_ E-mail Address: \_\_\_\_\_  
 (Please print or type)

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Routed To:

Approved by:

\_\_\_\_\_  
 (Check One)  
 Design, Code & Construction Dept.  
 Procurement & Materials Management Dept.

\_\_\_\_\_  
 Vice President or Designee  
 Business Diversity & Development Dept.



**COMPLIANCE PLAN**

for

**Prime Contractor Name:**

**Contract Number:**

**Contract Name:**

**Date:**

Applicable Business Diversity Program:

**Minority/Women Business Enterprise (M/WBE)**

## **Compliance Plan**

A. Contracts secured through a competitive selection process rather than a competitive bid process, the Vice President of BDDD may require proposers to address the project goal by means of a compliance plan. Such a plan allows a contract to address the project goal by means of commitments to utilize M/WBEs for Project work or by the demonstration of a good faith effort at the point where the project is sufficiently defined and the process of procuring the subcontractors to perform the work is about to begin.

B. The development, scope and utilization of such compliance plans will be governed by the following considerations and requirements.

### **C. Basis for Determination**

1. Unless otherwise authorized in writing by the Vice President of BDDD, a department may only require proposers to address a project goal by means of a compliance plan under the following conditions:

- a. The project solicitation must include the procurement of construction services.
- b. At the time of solicitation, the project design must not be complete or at a level of completeness allowing for final competitive pricing proposal; and
- c. The project solicitation must not require a lump sum price proposal or the construction of the project upon which a contract award will be made.

### **D. Development of Compliance Plan**

1. Upon a determination that a compliance plan will be required for a project, the compliance plan shall be developed in accordance with the following requirements:

- a. The Vice President of BDDD will require separate goals for project professional services and project construction services.
- b. The construction goal established for each project shall be expressed as a percentage of either:
  - i. The total amount of any lump sum construction contract awarded to complete a project
  - ii. Total estimated "cost of work," as that term is defined in any guaranteed maximum price contract awarded to complete a project, or
  - iii. On a task/work order
- c. The contracting department shall provide a good faith estimate of the construction cost upon which a goal shall be set, and the compliance plan proposer shall provide a refined estimate at the time of the submission of a proposed compliance plan, if the amount is not reflected in an executed contract.
- d. BDDD shall establish a timetable for submittal and review of any proposed compliance plan. During the solicitation process as solicitation submittal requirement; and after the conclusion of the solicitation process as a component of contract negotiations and award.

- e. Failure to comply with any submittal timetable established by BDDD may result in no further consideration of the proposed compliance plan.

**E. Elements of a Compliance Plan.** At a minimum, a proposed compliance plan shall address the following elements:

1. To the maximum extent applicable, the proposed compliance plan shall comply with the requirements of the M/WBE Program Policy and Administrative Procedures.
2. The proposed compliance plan shall set forth a detailed program for community outreach and support calculated to enhance participation opportunities.
3. The proposed compliance plan shall set forth a detailed program describing how the proposer will divide up the anticipated work into economically feasible units calculated to enhance participation opportunities.
4. The proposed compliance plan shall set forth a detailed methodology by which the Contractor shall meet the project goal.
5. The proposed compliance plan may be based upon a phased or packaged buy out of the project construction work and, if that is the case, will describe the process by which the proposer will address the project goal on a phased, package, or cumulative basis.
6. If appropriate, the proposed compliance plan shall address the subcontracting of normally self-performed work to meet the project goal.
7. The proposed compliance plan shall set forth how the proposer will comply with the requirements of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions as part of the construction work, including use of Commitment forms, Intent to Perform, Schedule of Subcontractors forms or proposal pricing worksheet to adequately document committed participation attained.
8. The proposed compliance plan shall contain a specific acknowledgement of the proposer's continuing duty, pursuant to the M/WBE Program Policy and Administrative Procedures, and Contract Provisions to maintain, throughout the duration of any project contract, compliance with the level of participation committed to under any approved compliance plan, and such commitment will be the basis for award of any contract. The plan will also detail the methodology the proposer will employ for maintain participation commitments.
9. The proposed compliance plan shall set forth a detailed methodology for tabulation of participation performance and plan administration, as well as monitoring and reporting progress and participation performance to BDDD. The plan shall provide for review and reconciliation milestones during the project and for review and audit opportunities for BDDD.
10. The proposed compliance plan will recommend methods for supporting BDDD administration and oversight of the plan, if approved.
11. The proposed compliance plan will affirm that BDDD shall have prompt, full and complete access to all contractor and subcontractor personnel, books and records



required to monitor and assure performance of the approved compliance plan. Additionally, the plan will acknowledge the Airport Board's right to impose withholding of payment in the event of noncompliance.

12. The proposed compliance plan shall set forth a detailed methodology for issuance of notice(s) of non-compliance with the plan and a reasonable opportunity to cure.
13. The proposed compliance plan shall set forth a detailed methodology for final reconciliation of participation performance, measured against the established goal and plan close out.

**F. Approval of Compliance Plan**

1. Upon receipt of a proposed compliance plan, BDDD shall review and either approve or initially reject, with comments, the proposed plan. In the event of a rejection of the proposed plan, the BDDD shall set a date for submission and if warranted, schedule a meeting to discuss any deficiencies that must be addressed in the re-submittal.
2. In the event the Vice President of BDDD formally rejects a proposed compliance plan, the Vice President of BDDD shall notify the agency head in writing of its determination and such determination shall result in no further consideration of the contractor's proposal or in termination of the contract for cause, in the event a contract has been awarded. In no event shall a contract to construct a project be executed or continue without a compliance plan approved by the Vice President of BDDD.
3. Upon approval, the compliance plan shall be incorporated and made a part of the contract with the plan proposer.

**G. Compliance and Enforcement**

1. The Contractor shall be subject to the Compliance and Enforcement in accordance with the M/WBE Program Policy and Administrative Procedures and Contract Provisions. If upon approval, the Contractor acknowledges and accepts that any failure to comply with any material term or condition of an approved compliance plan or applicable provision of the M/WBE Program Policy and Administrative Procedures, and Contract Provisions, including failure to satisfactorily address the project goal, maintain participation commitments or otherwise comply with any applicable requirements.

**Prime Contractor Name:  
Compliance Plan**

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- J. M/WBE Commitment Modification Due to Change in Scope of Work (Post Award)**

***Attachments (to be provided by Proposer)***

- 1. Commitment to M/WBE (as applicable) Form
- 2. Invitation to Bid Sample
- 3. Potential Construction/Construction Support Services
- 4. Potential Workscopes or Bid Packages and estimated M/WBE Participation Projections
- 5. Other Sample Forms

**A. Commitment to the Business Diversity Program Goal(s)**

Applicable Business Diversity Program:

**Minority/Women Business Enterprise (M/WBE)**

(Prime Contractor Name), the Prime Contractor for the (Project Name) has prepared this Compliance Plan, submitted pursuant to Dallas Fort Worth International Airport Board’s Minority/Women Business Enterprise (M/WBE) Program Policies and Administrative Procedures.

(Prime Contractor Name), the Invitation for Bid/Request for Proposal provided a Contract Specific Goal of % for this Contract. We are committed to achieving % M/WBE (as applicable) participation as a percentage of the total contract value including change orders and/or modifications. We understand that the M/WBE (as applicable) participation percentage commitment made by our Firm at the time of the Contract award is deemed to be contractual. The Commitment Form (Attachment 1) included in our bid/proposal indicates our commitment to the applicable Contract Specific Goal which will be met through the construction process. The participation percentage commitment will be met through various potential Construction/Construction Support Services showing the potential Work scopes or Bid Packages providing opportunities to subcontractors and suppliers to participate in the Project. The actual dollar values and percentages will vary for each Bid Package, which will be dependent upon the final design, quantities and the quotations received. While the overall commitment will be met, M/WBE (as applicable) participation may not be realized in the amounts shown for every bid package/work scope.

The delivery method for this project under the Contract is:

| <b>Delivery Method</b>                     | <b>Check Appropriate Box</b> |
|--|------------------------------|
| Design/Build                               | <input type="checkbox"/>     |
| CM/GC                                      | <input type="checkbox"/>     |
| Construction Management-at-Risk            | <input type="checkbox"/>     |
| Program Management/Construction Management | <input type="checkbox"/>     |
| Job Order Contract                         | <input type="checkbox"/>     |
| Indefinite Delivery: task/delivery order   | <input type="checkbox"/>     |

**B. Key Personnel - Duties and Responsibilities**

The Contractor shall appoint a high-level official to administer and coordinate the Contractor’s efforts to carry out the Business Diversity contractual commitments.

(Name & Title) is responsible for overseeing the implementation of the contract’s Business Diversity contractual commitments, including the following duties:

Description:

(Name & Title) is responsible for the community outreach efforts and oversees the outreach program to insure maximization participation by M/WBE (as applicable) subcontractors and suppliers. A detailed list of those efforts are outlined below:

Description:

(*Name & Title*) is responsible for the execution of the subcontractor contracts and completion of the work, including the following duties:

Description:

(*Name & Title*) is responsible for the collection and coordination of the Business Diversity documentation and monthly online diversity spend reports for all subcontractors and suppliers on the project. These reports will be turned in by the 10<sup>th</sup> of each month for the preceding month.

**C. Structuring Bid Packages for M/WBE Participation**

The Contractor has identified preliminarily the following separate packages of work to be subcontracted:

- Display the information in chart form as provided below for your use.
- Customize the form so that it provides the information specific to your project.
- The total at bottom needs to be the contract total.
- Showing subtotals along the way for completely different types of work is acceptable.
- The overall committed contract goal is the percentage stated on page 6.



These packages will be reviewed and refined as the work for the Contract is further defined and ready for the process of subcontracting. Specifically, prior to advertising any package of work for bids or proposals, the Contractor will review the work in detail, to determine the types of work that can be performed by M/WBE firms, with reference to BDDD's database and Directory of certified M/WBE firms, and will adjust its subcontracting packages to maximize opportunities for M/WBE participation in such subcontracting, within economically feasible packages.

The Contractor has the following preliminary schedule for issuance of each bid package:

Identify any specific issues or potential issues with the contract's scope of work and how the Contractor will address them – specialized work items, etc.

State whether the Contractor will prequalify any subcontractors. If prequalification will be used, identify all subcontracts for which the Contractor will prequalify subcontractors, and explain the prequalification process that will be used.

The Contractor may pursue different percentage goals for M/WBE participation in each separate package of work put out for bids, based on the types of work and availability of certified M/WBE firms. However, the Contractor is committed to the overall goal of % M/WBE participation in the total construction work amount.

The Contractor may consider, in order to maximize M/WBE participation, subcontracting the following types of work which it might ordinarily self-perform:

#### **D. Community Outreach Efforts and Advertising to M/WBE Certified firms**

The Contractor will conduct the following outreach efforts:

- Contractor will, at minimum, use the DFW D/M/WBE Directory and encourage all non-M/WBE subcontractors to use the Directory when soliciting any of their own subcontractors or suppliers for the project.
- If during outreach efforts, Contractor locates a firm which appears to be eligible for M/WBE certification but is not so certified, Contractor will direct the firm to the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest and encourage the firm to pursue certification if eligible.
- In order to count the participation of M/WBEs towards the Contract Specific Goal or Annual Goal, the M/WBE must be certified by the North Central Texas Regional Certification Agency (NCTRCA), DFW Minority Supplier Development Council or the Women's Business Council Southwest. Other certifications are not acceptable. In addition to having a valid certification from one of the entities listed above, the M/WBE must have a physical place of business in the Airport Board's relevant market area at the time the bid or proposal is submitted for credit towards meeting the M/WBE goal. This requirement is not applicable to the DBE Program. The Airport Board's relevant market area is Collin, Dallas, Denton and Tarrant counties.
- The M/WBE must provide any requested documentation to establish its place of business to the satisfaction of BDDD. Using a post office box, private mailbox

services, another person's or firm's office space (including Airport Board office space), virtual offices, shared or coworking office spaces, executive suites or staffing services does not satisfy the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the M/WBE Program Policy and Administrative Procedures available at [www.dfwairport.com](http://www.dfwairport.com).

- An M/WBE owner or employee living in the relevant market area does not satisfy the requirement that the M/WBE have a place of business in the relevant market area. However, an M/WBE majority owner who operates his/her own business solely from his/her own residence in the four-county relevant market area satisfies the requirement that the M/WBE have a physical place of business in the relevant market area. Please reference the Definitions in the M/WBE Program Policy and Administrative Procedures available at [www.dfwairport.com](http://www.dfwairport.com).
- When it has work packages ready for subcontracting, the Contractor will publish Requests for Bids in local newspapers, publications and websites, such as \_\_\_\_\_, identifying the subcontracting opportunities and specifically soliciting certified M/WBE participation. The Contractor will also provide notice of all such solicitations to relevant organizations such as, but not limited to, the Asian Contractors Association of Texas, DFW Minority Supplier Development Council, Regional Black Contractors Association, Regional Hispanic Contractors Association and the Women's Business Council Southwest. Notices will be published or provided no less than 10 calendar days before bids are due on the work.
- Contractor will conduct at least one pre-bid meeting, as announced in published notices, which all interested subcontractors and suppliers may attend, at which the Contractor will present information and answer questions about the work.
- Identify any additional efforts or initiatives the Contractor will carry out.
- Describe the bid/proposal process that will be used.
- The Contractor will send to each bidder/proposer, a Notice of Selection for each subcontract for which it solicited M/WBE participation, no later than 30 days after it has entered into the subcontract, so that unsuccessful bidders/proposers are aware of the result of the bid/proposal process.

## E. Methodology for Structuring Bid Packages

- When issuing each work package for bid under the Contract, the Contractor will make a good faith effort to meet or exceed the goal percentage of M/WBE participation which it has identified for that package. The minimum level of these efforts is specified in Section IX. Good Faith Efforts To Meet Contract Specific Goals of the M/WBE Program Policy and Administrative Procedures and Contract Provisions. They may include, but will not be limited to, the outreach activities identified in Section D above.
- When requested by BDDD, the Contractor will submit bid packages to BDDD for review and comment and the bid tabulation sheets to BDDD for review.
- The Contractor will report to BDDD the total M/WBE participation obtained for each bid package. No later than 5 days after issuing a Notice to Proceed for such work, the Contractor will submit to BDDD, for each M/WBE subcontractor or supplier with whom it contracts, an Intent to Perform and other documentation, in accordance with Section F below.
- The Contractor will document its efforts to obtain M/WBE participation for each work package and submit such documentation to BDDD upon request by BDDD at any time. The Contractor acknowledges that it may meet or exceed a percentage goal for M/WBE participation on one or more work packages but fall short of meeting the participation goal for the total construction contract amount. Therefore, the Contractor must be able to demonstrate its modified good faith effort, consistent with the M/WBE Program Policy and Administrative Procedures and Contract Provisions, Section IX. Good Faith Efforts To Meet Contract Specific Goals to obtain M/WBE participation for each bid package under the contract, except for bid packages which are subject to a “modified good faith effort” under Section J, of this document.
- The M/WBE participation percentage will be calculated by dividing the total value of the M/WBE participation by the total contract amount for the project, including all change orders. The Contractor will count M/WBE participation according to the Preliminary or Final Schedule of Subcontractor.
- As required by the M/WBE Program Policy and Administrative Procedures and Contract Provisions, the Contractor shall inform the BDDD in writing of any agreed-upon increase or decrease in the scope of work of the Contract, regardless of whether it has been reduced to writing at the time of notification. Any increase in the scope of work which increases the dollar value of the contract, whether or not such change is within the scope of work designated for performance by an MBE or WBE under any subcontract, shall be submitted to the BDDD. Those changes to the scope of work that cannot be performed by existing project participants (the Contractor, subcontractors, suppliers, etc.) shall be subject to a goal for MBEs and WBEs equal to the original committed goal. The Contractor shall satisfy the goal for the changed scope of work by soliciting new M/WBEs in accordance with M/WBE Program Policy and Administrative Procedures and Contract Provisions, and it must show each element of modified good faith that is stated in the M/WBE Program Policy and Administrative Procedures and Contract Provisions. The Contractor shall provide to the Vice President of BDDD documentation with respect to the increased dollar value of the contract.
- The Contractor will comply with the provisions of Section XII of the M/WBE Program Policy and Administrative Procedures and Contract Provisions as to the substitution or termination of a M/WBE on the Project.



- The Contractor acknowledges that it has a continuing duty, under the M/WBE Program Policy and Administrative Procedures and Contract Provisions as it relates to Compliance with achieved project goal level required throughout the performance of the contract, project change orders, amendments, and modifications, to maintain, throughout the duration of the contract, compliance with the level of M/WBE participation committed to under any approved compliance plan, and that such commitment is a material condition of the Contract.

**F. Compliance Documents and Reporting**

- The Contractor will submit the following documentation, properly completed and submitted monthly or when otherwise required by BDDD.
  - Final Schedule of Subcontractors\*
  - Certification Certificates
  - Intent to Perform Forms
  - B2Gnow online payment reporting and verification
  - (\*due at NTP + 5 days; revisions as required)
- The Contractor will document its progress in seeking and obtaining M/WBE participation as required by BDDD. Records of the Contractor's efforts to solicit M/WBE subcontractor and supplier participation, will be maintained and reported monthly to BDDD, or as otherwise required, including:
  - Dates of solicitation
  - Names, addresses and telephone numbers of all M/WBE firms contacted.
  - Description of efforts made to contact M/WBE firms.
  - Description of information provided to M/WBE firms.
  - Description of the process and outcome.
  - Advertisements soliciting bids from M/WBE firms in local community publications or construction industry related publications.
  - Schedules of pre-bid meetings to inform M/WBE and non-M/WBE subcontractors and suppliers of opportunities to participate.
  - Evidence that the Contractor provided M/WBE subcontractors and suppliers necessary access to and adequate time to review all project documents.
  - All other documentation required to establish the Contractor's compliance with the good faith efforts requirements.

**G. Plan Administration, Monitoring, and closeout**

- BDDD shall have prompt, full and complete access to all Contractor personnel, books and records required to monitor and assure performance of this Compliance Plan.
- The Contractor's personnel identified in Section B above will be responsible for administering and monitoring the Contractor's performance of this Compliance Plan.
- Actual M/WBE participation will be calculated in accordance with the M/WBE Program Policy and Administrative Procedures. The Contractor will submit to BDDD a monthly tracking report demonstrating the M/WBE participation that has been achieved.
- The Contractor will meet monthly with BDDD for review and reconciliation of M/WBE participation during the contract.

- The Contractor will use the following methodology for final reconciliation of M/WBE participation performance achieved during the Contract term, measured against the established project goal. The Contractor will present copies of all signed BDDD Final Lien Release forms for M/WBE firms utilized for participation on the Contract. BDDD will compare the Final Monthly Participation Report submitted by the Contractor to determine if the Final Lien Release dollar figures match what is contained within the Final Monthly Participation Report. Final Compliance shall be achieved when the Contractor establishes to the Vice President's satisfaction, that it has remitted payments to M/WBE firms utilized on the Project; that it utilized M/WBE firms in accordance with each such firm's Intent to Perform; and that the amount of payments to M/WBE firms equals or exceeds the assigned M/WBE goal for the total amount of the Contract. .
- If Contractor fails to achieve final compliance, the Board may exercise any of following remedies, in addition to any other remedies available to it under this Contract or at law or in equity:
  - withholding funds payable under this Contract, including, but not limited to, funds payable for work self-performed by the Contractor or applicable retainage;
  - temporarily suspending, at no cost to DFW, Contractor's performance under the Agreement/Contract;
  - termination of the Agreement/Contract;
  - suspension/debarment, in accordance with applicable law, of Contractor for a period of a minimum of one year from participating in any solicitations issued by DFW for severity of breach of Contract.
- With respect to a Contractor not meeting a goal on a previous contract or the underutilization of M/WBEs on a previous contract, BDDD shall regard as non-responsive any bid, proposal or competitive selection process proposal received that includes the Contractor, consultant as a Contractor, consultant, subcontractor, subconsultant, joint venture, supplier, manufacturer's representative, or broker.

#### **H. Non-Compliance, Remedies, and Remediation Plan**

- At all times, BDDD shall monitor the Contractor's compliance with this Plan and the M/WBE Program Policy and Administrative Procedures. The Contractor shall fully cooperate with BDDD's compliance monitoring and auditing efforts, including BDDD's investigation of any alleged or suspected non-compliance by the Contractor.
- If the Vice President has reason to believe that the Contractor is not in compliance with this Plan or with the M/WBE Program Policy and Administrative Procedures, the Vice President shall give the Contractor written notice of non-compliance, citing the reasons why the Contractor is not in compliance, and giving the Contractor thirty (30) days in which to submit a remediation plan for the Vice President's review and acceptance. The remediation plan shall demonstrate how the Contractor will cure such non-compliance, and if such non-compliance consists of failure to obtain or maintain M/WBE participation at the committed level, that the Contractor's M/WBE participation level will again achieve the committed level, and that the Contractor will ultimately achieve the committed participation goal for the contract.
- The Contractor shall, within such thirty (30) day period, deliver to the Vice President a written remediation plan for the Vice President's review and approval.

- The Vice President may issue a written determination of non-compliance and the remedy which the Vice President has chosen:
  - If the Contractor does not respond within the time allowed; or
  - If the Contractor fails to submit a satisfactory remediation plan; or
  - If a Contractor submits an acceptable remediation plan but thereafter fails to comply with the plan.

**I. Dispute Resolution**

- The Contractor will provide a process to resolve disputes that occur between the Prime Contractor and M/WBE subcontractors or suppliers or between a M/WBE and any non-M/WBE subcontractors or suppliers under the Contract. The Contractor will document such disputes and inform BDDD of the steps the Contractor plans to take to resolve the dispute. BDDD encourages all Contractors that may have a dispute with any subcontractor to attempt to resolve such dispute through appropriate formal or informal alternative dispute resolution procedures, including, but not limited to, negotiation, mediation, collaborative law, arbitration and/or conciliation, prior to seeking BDDD's assistance in resolving the dispute. If any Contractor or subcontractor does seek BDDD's assistance, it may require them to first attempt to resolve their dispute through appropriate alternative dispute resolution procedures and to provide BDDD with evidence of their good faith attempts to resolve the dispute as a condition of further assistance from BDDD. BDDD will notify the Contractor of any complaints received by BDDD from M/WBE firms regarding a dispute they are experiencing with either a subcontractor or the Contractor.
- Describe Contractor's Dispute Resolution Plan:

**J. M/WBE Commitment Modification Due to Change in Scope of Work (Post Award)**

- The Contractor has a continuing obligation as a covenant of performance to meet the D/MWBE utilization to which it committed at contract award, inclusive of change orders, amendments, and modifications. If the Contractor during contract performance must replace a M/WBE for any reason, it must follow the provisions herein governing the substitution of MWBEs and make documented good faith efforts to meet its original M/WBE contractual commitment. Such good faith efforts during contract performance must include, but are not limited to:
  - Solicitation of M/WBEs that are certified in the applicable area of work or specialty;
  - Providing interested M/WBEs with adequate information about the plans, specifications, scope of work and requirements of the contract;
  - Fairly investigating and evaluating the interested M/WBEs' regarding their capabilities, not rejecting M/WBEs as unqualified without sound reasons based on a thorough investigation, and providing verification, including a statement giving the Contractor's reasons for its conclusion, that it rejected each non-utilized M/WBE because the M/WBE was not qualified;
  - Negotiating in good faith with interested M/WBEs regarding price, using good business judgment and not rejecting reasonable quotes from interested M/WBEs and providing written documentation why the Contractor and any of the M/WBEs contacted did not succeed in negotiating an agreement; and

- Effectively using the services of available minority and women community organizations; chambers and contractor groups; local, State, and Federal business assistance offices, and other organizations that provide assistance in the identification of M/WBEs
- A Contractor determined not to have made good faith efforts to meet its M/WBE contractual commitments may request administrative review and final reconsideration by the Vice President of BDDD. The Contractor may elect to meet in person to discuss whether the Contractor made good faith efforts in accordance with the Policies. BDDD's determination shall be final.

**PRIME CONTRACTOR ACKNOWLEDGEMENT:**

Prime Contractor Name:

Name of Authorized Representative or Designee:

Title of Authorized Representative or Designee:

Signature: \_\_\_\_\_

**FOR DFW BUSINESS DIVERSITY & DEVELOPMENT USE ONLY:**

Plan Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

Recommendation: Approval: \_\_\_\_\_ Denial: \_\_\_\_\_

Comments:

Signature of Vice President BDDD: \_\_\_\_\_ Date: \_\_\_\_\_

(rev 8/12/2020)